

§ 214.403

(2) The position must be filled by a career appointee to ensure impartiality, or the public's confidence in the impartiality, of the Government.

(c) The head of an agency shall use the following criteria in determining whether paragraph (b)(2) of this section is applicable to an individual position:

(1) Career reserved positions include positions the principal duties of which involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major controversial policies of the Administration or agency, in the following occupational disciplines:

- (i) Adjudication and appeals;
- (ii) Audit and inspection;
- (iii) Civil or criminal law enforcement and compliance;
- (iv) Contract administration and procurement;
- (v) Grants administration;
- (vi) Investigation and security matters; and
- (vii) Tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions.

(2) Career reserved positions also include:

(i) Scientific or other highly technical or professional positions where the duties and responsibilities of the specific position are such that it must be filled by a career appointee to insure impartiality, of the Government.

(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

(d) The Office of Personnel Management may review agency designations of general and career reserved positions. If the Office finds that an agency has designated any position as general that should be career reserved, it shall direct the agency to make the career reserved designation.

(e) The minimum number of positions in the Senior Executive Service Governmentwide that must be career reserved is 3,571 as determined by the Director of the Office of Personnel Management under section 3133(e) of 5 U.S.C. To assure that this figure is met, the Office may establish a minimum number of career reserved posi-

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tions for individual agencies. An agency must maintain or exceed this number unless it is adjusted by the Office.

[45 FR 62414, Sept. 19, 1980; 45 FR 83471, Dec. 19, 1980]

§ 214.403 Change of position type.

An agency may not change the designation of an established position from career reserved to general, or from general to career reserved, without the prior approval of the Office of Personnel Management.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subparts A–C [Reserved]

Subpart D—Agency Authority to Take Personnel Actions in a National Emergency

Sec.

230.401 Agency authority to take personnel actions in a national emergency disaster.

230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; sec. 230.402 also issued under 5 U.S.C. 1104.

Subparts A–C [Reserved]

Subpart D—Agency Authority To Take Personnel Actions in a National Emergency

§ 230.401 Agency authority to take personnel actions in a national emergency disaster.

(a) Upon an attack on the United States, agencies are authorized to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster without regard to any regulation or instruction of OPM, except those which become effective upon or following an attack on the United States. This authority applies only to actions under OPM jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as possible under the circumstances and shall

be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) An employee may not acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by OPM.

(e) Agencies shall maintain records of the actions taken under this section.

[35 FR 5173, Mar. 27, 1970]

§ 230.402 Agency authority to make emergency-indefinite appointments in a national emergency.

(a) *When a national emergency exists—*

(1) *Definition.* A national emergency must meet *all* of the following conditions:

(i) It was declared by the President or Congress.

(ii) It involves a danger to the United States' safety, security, or stability that results from specified circumstances or conditions and that is national in scope.

(iii) It requires a national program specifically intended to combat the threat to national safety, security, or stability.

(2) *Termination of a national emergency.* A national emergency no longer exists if it is officially terminated by the President or Congress, or if the *specific* circumstances, conditions, or program cited in the original declaration are terminated or corrected.

(b) *Basic authority.* Agencies may make emergency-indefinite appointments without OPM approval during any national emergency as defined in paragraph (a) of this section. The head of an agency with a defense-related mission may request OPM's approval to make emergency-indefinite appointments without a declared national emergency when the President has authorized the call-up of some portion of the military reserves for some military purpose. The request must demonstrate that normal hiring procedures cannot meet surge employment requirements and that use of emergency-indefinite appointments is necessary for economy and efficiency. Except as provided by paragraphs (c) and (d) of this section,

agencies must make emergency-indefinite appointments from appropriate registers of eligibles as long as there are available eligibles.

(c) *Appointment under direct-hire authority.* An agency may make emergency-indefinite appointments under this section using the direct-hire procedures in part 337 of this chapter.

(d) *Appointment noncompetitively.* An agency may give emergency-indefinite appointments under this section to the following classes of persons without regard to registers of eligibles and the provisions in § 332.102 of this chapter:

(1) Persons who were recruited on a standby basis prior to the national emergency;

(2) Members of the National Defense Executive Reserve, designated in accordance with section 710(e) of the Defense Production Act of 1950, Executive Order 11179 of September 22, 1964, and applications issued by the agency authorized to implement the law and Executive Order; and

(3) Former Federal employees eligible for reinstatement.

(e) *Tenure of emergency-indefinite employees.* (1) Emergency-indefinite employees do not acquire a competitive status on the basis of their emergency-indefinite appointments.

(2) An emergency-indefinite appointment may be continued for the duration of the emergency for which it is made.

(f) *Trial period.* (1) The first year of service of an emergency-indefinite employee is a trial period.

(2) The agency may terminate the appointment of an emergency-indefinite employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

(g) *Eligibility for within-grade increases.* An emergency-indefinite employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with subpart D of part 531 of this chapter.

(h) *Applications of other regulations.* (1) The term *indefinite employee* includes an emergency-indefinite employee or an employee under an emergency appointment as used in the following: Parts 351, 353 of this chapter, subpart G

of part 550 of this chapter, and part 752 of this chapter.

(2) The selection procedures of part 337 of this chapter apply to emergency-indefinite appointments that use the direct-hire authority under paragraph (c) of this section.

(3) Despite the provisions in §831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of §831.201 of this chapter.

(i) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

(5 U.S.C. 1104; Pub. L. 95–454, sec. 3(5))

[44 FR 54691, Sept. 21, 1979, as amended at 60 FR 3057, Jan. 13, 1995; 68 FR 35268, June 13, 2003]

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

Subpart A—Authority for Personnel Actions in Agencies

Sec.

250.101 Standards and requirements for agency personnel actions.

250.102 Delegation agreements.

250.103 Taking corrective action or suspending or withdrawing agency authority.

AUTHORITY: 5 U.S.C. 1101 note, 1104, 1302, 3301, 3302; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218.

SOURCE: 58 FR 36119, July 6, 1993, unless otherwise noted.

Subpart A—Authority for Personnel Actions in Agencies

§ 250.101 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards and regulations issued by the Office of Personnel Management, the instructions published by OPM in the Guide to Processing Personnel Actions, and the provisions of any agreement development between OPM and the

agency in connection with delegation of a specific authority. When a personnel action is being taken as a result of an order of a Court or a settlement agreement, or a decision or order of or a settlement agreement or an arbitral award reached under the labor arbitration process or the rules and regulations of the Merit Systems Protection Board, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or OPM, the agency shall follow the instructions in the Guide to Processing Personnel Actions, and must comply with all other relevant substantive and documentary requirements, including those applicable to retirement, life insurance, and health benefits.

[58 FR 36119, July 6, 1993, as amended at 66 FR 66709, Dec. 27, 2001]

§ 250.102 Delegation agreements.

In certain circumstances, an agency will receive authorities through a delegation agreement developed between the agency and OPM. The agreement will set forth the conditions for application of the delegated authorities. The agreement will include a description of minimum standards of performance and the system of oversight to be used by the agency and by OPM in monitoring the use of each delegated authority.

§ 250.103 Taking corrective action or suspending or withdrawing agency authority.

If OPM finds that an agency has taken an action contrary to a law, rule, regulation, or standard which OPM administers, it may require the agency to take corrective action. OPM may suspend or withdraw any authority granted under this chapter to an agency, including any authority granted by delegation agreement, when it finds that the agency has not complied with qualification standards issued by OPM, the instructions published by OPM, or the regulations in this chapter; or that the suspension or withdrawal is in the interest of the service for any other reason. OPM may suspend or revoke a delegation agreement established under § 250.102 at any time,